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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/615,152 | 07/08/2003 | Parris S. Wellman | 14641Z (ETH-1559CONT) | 8263 |

23389 7590 05/11/2006

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| EXAMINER |
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PEFFLEY, MICHAEL F

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| ART UNIT | PAPER NUMBER |
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3739

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/615,152

Applicant(s)

WELLMAN ET AL.

Examiner

Michael Peffley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-31 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 21-31 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 29, 2006 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 21-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ryan et al (6,224,593) in view of the teaching of Abele et al (5,190,541).

Ryan et al discloses a surgical device that includes a shaft (10) having an internal lumen, and a hook (36) at the distal end of the shaft in communication with a slot. Ryan et al also disclose a clamp member (42) slidable in the slot to clamp tissue against the hook member. As seen in Figure 1, there is a tubular shaft (30) having an internal lumen and a slot comprising a cross section of the tubular shaft. The slot is deemed to be the entire open area above the extension member (32) through which the clamp member (42) slides. The extension member is an extension of the tubular shaft and has a hook member (36) at the distal end. Ryan et al disclose a microwave electrode arrangement for treating tissue, and not RF electrodes, and fail to disclose an

electrode on the hook member. Ryan et al also fail to disclose a cutting member as well as a tapering dissecting tip.

As disclosed previously, Abele et al disclose an analogous clamping/heating instrument and specifically disclose the use of RF electrodes and a cutting member to cut tissue after its been clamped. Abele et al further teach that it is advantageous to provide the cutting and clamping member with a dissecting tip (64) that narrows in the distal direction to assist in dissecting tissue when using the clamping/cutting device.

To have provided the Ryan et al device with RF electrodes, in lieu of the microwave electrodes, would have been an obvious modification for one of ordinary skill in the art in view of the teaching of Abele et al. To have further provided the Ryan et al device with a cutting member to cut tissue after its been clamped and treated and with a tapered dissecting tip to better access tissue to be treated would have been an obvious modification in view of the Abele et al teaching.

Response to Arguments

Applicant's arguments filed March 29, 2006 have been fully considered but they are not persuasive.

Independent claims 21 and 27 have been amended to recite the particular cross-section shape of the dissecting tip. Applicant asserts that the Ryan reference fails to disclose such a dissecting tip, and the examiner agrees. However, the examiner disagrees with applicant's assertion that the Abele et al reference fails to disclose such a dissecting tip. As clearly seen in Figures 5A-5C, the dissecting tip (64) has a cross section that narrows in the distal direction (i.e. has a pointed tip). Abele et al teach that

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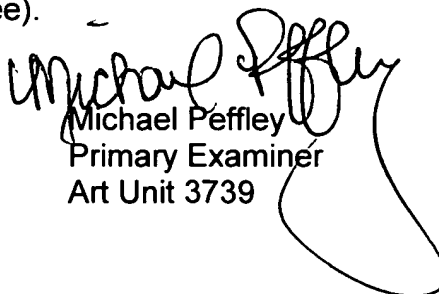
the tip member is used for blunt dissection of tissue (col. 4, lines 10-25). The examiner maintains that the inclusion of such a blunt dissection tip in the Ryan reference, which is used for a similar clamping procedure, to manipulate and access tissue to be clamped would be obvious in view of this direct teaching of Abele et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michael Peffley
Primary Examiner
Art Unit 3739

mp
May 4, 2006